

BOARD MEETING MINUTES FOR NONPROFITS & EXEMPT ORGANIZATION

Section 2: Variety Of Mistakes:

Unfortunately, a variety of mistakes are commonly associated with the taking and keeping of minutes including:

- Failing to document a quorum was present;
- Failing to document or provide a clear description about a board action taken;
- Drafting a transcript of everything said at the meeting, including information that might be harmful to the organization if read by someone with access to the minutes (e.g., employees or members) or by a court reviewing a board action;
- Drafting and distributing minutes to directors after a lengthy period of time has passed;
- Waiting to approve minutes from past meetings until a substantial period of time has passed, decreasing the likelihood that mistakes will be caught and corrected; and
- Failing to maintain a reasonable document management system, resulting in the loss of minutes from past meetings.

Section 3: What should minutes look like?

EASILY UNDERSTOOD:

Anyone reading an organization's minutes should be able to easily understand, at a minimum, what actions were taken and how they were approved.

CONTENT:

There is no hard and fast rule regarding the level of detail to be included in minutes. Organizations are not required to, nor should they, record every detail or statement said at the meeting. However, there should be enough information to make the minutes useful should they ever be used for reference or offered as evidence that an action was properly taken or that directors fulfilled their fiduciary duties. Boards and secretaries tasked with recording or approving the minutes should use their best judgment about the degree of specificity provided in the minutes.

Board minutes should include basic information such as:

- Date and time of meeting;
- Whether the meeting is a special or regular meeting;
- Whether notice was given or a waiver of notice signed by all directors;
- Full Names of directors & titles in attendance and likewise with directors not in attendance;
- Names of other guests in attendance (and their titles or associations);
- Whether a quorum was established;

- Any departures and re-entries of attendees; and
- Any board actions (e.g., approvals, delegations of authority, directives).

Suggestions:

- Include alternatives considered for important decisions to show diligence and reasonable care;
- Attach and briefly summarize key points from any reports given to the board (so long as they may not be misconstrued to be prejudicial to the organization or to the board);
- Know what vote is required by your bylaws (e.g., majority, supermajority) for certain actions and clearly indicate if such a vote was reached;
- Record recusals from discussions and abstentions from voting;
- Include those votes that were against a motion (see Part II); and
- Include action items, what people commit to do.

Section 4: Confidential or sensitive information:

Boards should also be thoughtful with how they handle confidential or sensitive information. For example, organizations may choose to hold an executive session to discuss matters such as executive director reviews or pending litigation. According to [Blue Avocado](#), "The minutes of the meeting should indicate that the board met in executive session, and report on the topic of the discussion, although the specifics (such as the amount of a lawsuit settlement) may be confidential and appear only in a set of confidential-to-the-board minutes or other notes." A separate recordkeeping system should be established for such confidential information, which is better not identified as "minutes" to prevent members and others from asserting the right to view such information.

Section 5: FORMAT:

Format is really a question about how to best organize the content. Again, there is no right answer. There are however a few guiding principles. Ideally, nonprofits should maintain consistency with the format of their minutes. This does not mean the format should not be improved over the years to be more readable, clear, and useful to the organizations and others; this does however mean that format should not simply change at whim or due to lack of institutionalized knowledge about appropriate ways to document meeting minutes. Unexplainable changes in format can make minutes more difficult to understand internally and can also raise suspicion for outsiders. For example, if the organization's January minutes provide detailed accounts of board discussion over a minor issue, it can raise flags if the organization's February minutes barely account for any discussion on a major issue such as increasing an executive's compensation amount by a

substantial amount. Additionally, the format used should be one that is user-and reader-friendly.

Suggestions:

- Adopt and use a meeting “minute template;”
- Use a format that clearly indicates when a board action has been taken (e.g., “Resolved,” “Action”);
- Set apart important information such as “action items” (actions that directors have committed to doing).

Section 6: TIMING:

The revised Form 990 asks in Part VI, Section A, Question 8 whether there is contemporaneous documentation of the board and board committee meeting minutes or written actions. The Form 990 instructions then go on to say that “contemporaneous” means “by the later of (1) the next meeting of the governing body or committee (such as approving the minutes of the prior meeting) or (2) 60 days after the date of the meeting or written action.” Organizations that do not conduct contemporaneous documentation must explain their practices or policies, if any, regarding documentation of board or board committee meetings or written actions. Although there is no outlined penalty for a failure to take contemporaneous minutes, the question’s presence on Form 990 indicates that meeting minute’s documentation is an area of concern for the IRS. Failure to adopt practices for better meeting minutes documentation may be a factor that weighs against the organization in the eyes of the IRS or courts. Additionally, a shallow explanation for poor practices may raise concern with funders, donors, and the public who have access to an organization’s Form 990.

Section 7: RETENTION

While the duration of record retention can vary widely depending on the type of record, the IRS has indicated in its compliance guides that the board minutes of 501(c)(3) [public charities](#), [private foundations](#), and [other tax-exempt organizations](#) should be kept permanently by the organization. Other documents that the IRS directs to be kept permanently include an organization’s determination letter, articles of incorporation and bylaws, again highlighting the importance of meeting minutes. Organizations should be aware of such a strong directive from the IRS supported by the opinion of many nonprofit lawyers.

The content and retention of board meeting minutes are also important in part because of who may inspect the minutes and why such inspection may occur.

Section 8: DIRECTORS:

Under the [California Corporations Code](#), every director of a nonprofit public benefit or mutual benefit corporation “shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the corporation of which such person is a director.” *C.C.C. Sections 6334, 8334*. This is an unqualified right, meaning the director does need to give the organization a reason for inspecting the minutes in order to do so. This may be of concern when, for example, certain directors recuse themselves from a discussion due to a conflict of interest or if directors are

addressing the removal of a current director. In such situations, the sensitivity of the discussion as documented in the minutes should reflect a similar if not the same rationale of the actual practices taking place at the meeting. For example, depending on the situation and content of the discussion, it may be recommended to remove any attribution of names to certain statements or may be advisable to paraphrase the discussion. This by no means suggests that minutes should be fabricated, inaccurate, or incomplete.

(Note, the director inspection right is more limited for a California nonprofit religious corporations in which every director “shall have the right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the corporation of which such person is a director for a purpose reasonably related to such person’s interests as a director.” *C.C.C. Section 9513*.)

Section 9: MEMBERS:

In California, if a nonprofit public benefit or mutual benefit corporation is a membership organization meaning it has members as defined by the California Corporations Code, those members also have a right to inspect meeting minutes. Under the California Corporations Code, the meeting minutes of the members, the board, and committees of the board of a nonprofit public benefit or mutual benefit corporation “shall be open to inspection upon the written demand on the corporation of any member at any reasonable time, for a purpose reasonably related to such person’s interests as a member.” *C.C.C. Sections 6333, 8333*.

Membership inspection rights reiterate the importance of having minutes that are prepared with an awareness of third parties. Minutes are not simply used to refresh the memories of those individuals who were in attendance at the meeting. In some cases, minutes are being read by individuals who were not in the room during the meeting but who are now reading the minutes and trying to understand what happened. Unclear, careless, or poorly documented minutes can create unnecessary suspicion or problems for an organization such as undermining what was actually a validly approved action or destroying privilege of confidential communications.

(Note, the membership inspection rule is also slightly different for a California nonprofit religious corporation in which members also have the right to submit a written demand to inspect the minutes at any reasonable time, for a purpose reasonably related to such person’s interest as a member, “[e]xcept as otherwise provided in the articles or bylaws.” *C.C.C. Section 9512*.)

Section 10: IRS

Meeting minutes are generally some of the first documents requested by the IRS from an organization during an audit. In addition to the IRS’s concerns regarding potential tax code violations, in recent years, the IRS has taken a more active role in nonprofit governance. Thus, meeting minutes content as well as documentation practices seem to have increasing importance to the IRS.

Section 11: IRS Audit:

IRS agents can exam the books and records of an organization, including its minutes, during an IRS examination to “establish whether an organization is both organized and operated for tax-exempt purposes, what related returns have been or need to be filed by the organization, and whether any tax reported is reasonably correct.” *Internal Revenue Manual (Part IV, Section 4.75.11.9, Examination of Books and Records) (08-30-2010)*.

It is possible for minutes to be one of the records used to establish key information such as substantiating or expanding upon information about the organization's activities, verifying the accuracy of the return, and determining whether any taxes are accurately reported. *Id.*

The look-back period and volume of review can vary. An IRS agent is directed to review minutes for the year under examination, prior years, and subsequent years: “At a minimum, coverage should include at least the year before and the year after the return under examination. The examiner will expand the review as circumstances warrant.” *Internal Revenue Manual (Part IV, Section 4.75.11.9.3, Minutes) (08-30-2010)*.

Additionally, the agent is directed to review subcommittee minutes (e.g., executive, audit, finance, and compensation committees). *Id.*

The content of the minutes can also affect the level of inquiry. For example, the Internal Revenue Manual states: “The examiner should consider all attachments, exhibits, and reports as part of the minutes. If they are not provided with the minute book, they should be requested as an integral part of the minutes. This would also include correspondence referred to in the minutes.” *Internal Revenue Manual (Part IV, Section 4.75.11.9.3, Minutes) (08-30-2010)*.

The Internal Revenue Manual additionally states that “[d]ates listed in the minutes will help to identify possible timeframes to be used for document sampling.” *Id.*

Thus an IRS agent can cast quite a broad net with his or her request for minutes and failing to have adequately document minutes will likely only create more work for the organization and trigger more scrutiny.

Section 12: Tax Code Compliance:

There are commonly known concerns of the IRS for which the IRS will look to meeting minutes should the organization be called into question on such issues. This includes proposed or past activities that may violate exempt purposes or constitute unrelated trade or businesses; transactions which may serve the private interests of the trustees, directors, officers or private individuals; and transactions with related entities. See *Internal Revenue Manual (Part IV, Section 4.75.11.9.3, Minutes) (08-30-2010)*.

Therefore, for board actions that may implicate these common concerns of the IRS, it could be especially important to assure the meeting minutes have been accurately, sufficiently, and properly documented.

Section 13: Governance:

Recently, the IRS has shown an interest in governance issues (generally understood as a state law issue) for which meeting minutes also play a role. At a [Continuing Legal Education event on Nonprofit Governance in 2009](#), Sarah Hall Ingram, (then) Commissioner of the Tax Exempt and Government Entities (TE/GE) of the IRS, explained the IRS's increased attention on governance as related to “a number of key organizational and operating principles that the IRS has already articulated, and that find their origin in the Internal Revenue Code. They are not expressly laid out in the Code, nor do they need to be, but the principles of governance that are of concern to the IRS should derive from the requirements for tax exemption, and should aid an organization in meeting them.” One identified principle of governance by Ingram was transparency. Ingram stated “board decisions should be reflected in minutes, that records supporting decisions should be retained for reasonable periods....” Thus, the quality of an organization's practices with respect to meeting minutes can affect the IRS's conclusion about the governance of the organization.

In 2009, the public got a closer look at how the IRS looked at nonprofit governance when it released the [Governance Checklist](#) used by IRS agents during examinations. Similar to Form 990, the Governance Checklist addresses documentation practices, asking the agent to indicate “how often the board of the organization contemporaneously documents its meetings and retains this documentation” (Question 25). Again, there is no isolated penalty connected with a lack of contemporaneous meeting minutes documentation alone, but it may be a factor against the organization for alleged violations such as executive compensation issues in establishing the rebuttable presumption of reasonableness (please see previous post, “[Executive Compensation](#)”).

The Governance Checklist also suggests that meeting minutes affect other governance concerns such as director participation and organizational control. As [Jack Siegel of Charity Governance pointed out](#) >, the Governance Checklist asks (1) how often the voting board members met during the primary year under the examination (Question 11(a)) (2) and how often the full board met (Questions 11(b)). Thus, failing to document simple information such as full names and titles of attendees and the date of the meeting can negatively affect a larger concern of whether directors are meeting their fiduciary duties in actually attending meetings and with enough frequency for proper oversight. (3) Additionally, Siegel noted that the IRS asks whether there is “a single individual or small group of individuals whom the board typically defers” (Question 17). He went on to state “We suspect agents will be asking questions and reading minutes in an effort to answer that question.” Thus, depending on the organizational culture and/or nature of the action, documenting votes that were against or abstained might be appropriate if this can be a perceived concern.

Section 14: STATE OFFICIALS & COURTS:

In California, the Attorney General is charged with the authority to regulate nonprofit corporations. At a minimum, the California Corporations Code requires nonprofit corporations to keep “minutes of the proceedings of its members, board and committees of the board” in “written form or in any other form capable of being converted into clearly legible tangible form or in

any combination of the foregoing” and for which may be admitted as evidence for all accepted purposes. See C.C.C. Sections 6320, 8320, 9510.

For nonprofits, considerations about documentation practice should extend beyond what is minimally required as meeting minutes can be important evidence in defending against lawsuits such as allegations against a director of a failure to fulfill fiduciary duties.

Furthermore, as Michael W. Peregrine and Elizabeth M. Mills contemplated in [The Exempt Organization Tax Review \(Feb. 2010\)](#), “[i]t is also conceivable that the new [IRS] governance

examination guidelines may be used by state charity officials to support their own evaluation of charity compliance with state nonprofit law principles, given the degree of cooperation between these officials and the IRS. This is especially true as state charity officials become more aggressive in their scrutiny of allegedly problematic governance practices (for example, the Stevens Institute litigation).” Thus, although the IRS and state Attorney General are different regulatory bodies, organizations will play it most safe if they make efforts to address the strictest concerns.

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NMHOA would like to THANK Gene at NEO for permission to reprint this article.

Emphasis added: The section numbers and titles were not part of the original posting. The word “full” was added to the names and titles of attendees.

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Reference:

NEO

Nonprofit & Exempt Organizations Law Group

Web Page: nonprofitlawblog.com